

HOBBS ACT

Ocasio v. U.S., --- U.S. --- (2016)

Decided May 2, 2016

FACTS: Moreno-Mejia (known as Moreno) and Mejia (known as Mejia) are “brothers who co-owned and operated the Majestic Auto Repair Shop (Majestic).” In 2008, with the business struggling, they made a deal with Officer Corona (Baltimore PD) that “in exchange for kickbacks, Officer Corona would refer motorists whose cars were damaged in accidents to Majestic for towing and repairs. Officer Corona then spread the word to other members of the force, and eventually as many as 60 other officers sent damaged cars to Majestic in exchange for payments of \$150 to \$300 per referral.” Ocasio became part of the scheme in 2009 and made several referrals. The scheme was “highly successful: It substantially increased Majestic’s volume of business and profits, and by early 2011 it provided Majestic with at least 90% of its customers.”

In 2011, with the scheme discovered, ten officers and the two shopowners were indicted. Most of the officers pled guilty, but Ocasio did not. He was charged with “three counts of violating the Hobbs Act, 18 U. S. C. §1951, by extorting money from Moreno with his consent and under color of official right. As all parties agree, the type of extortion for which [Ocasio] was convicted— obtaining property from another with his consent and under color of official right—is the “rough equivalent of what we would now describe as ‘taking a bribe.’”¹ To prove this offense, the Government ‘need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.’” Ocasio and Manrich, another officer, were also charged with Conspiracy under 18 U.S.C. 371, to commit the substantive Hobbs Act offenses.

Ocasio went to trial² After a debate over jury instructions, the court provided an instruction in which the jury was told that:

In order to convict petitioner of the conspiracy charge, the jury was told, the prosecution was required to prove (1) that two or more persons entered into an unlawful agreement; (2) that petitioner knowingly and willfully became a member of the conspiracy; (3) that at least one member of the conspiracy knowingly committed at least one overt act; and (4) that the overt act was committed to further an objective of the conspiracy. The court “caution[ed]” “that mere knowledge or acquiescence, without participation in the unlawful plan, is not sufficient” to demonstrate membership in the conspiracy. Rather, the court explained, the conspirators must have had “a mutual understanding . . . to cooperate with each other to accomplish an unlawful act,” and petitioner must have joined the conspiracy “with the intention of aiding in the accomplishment of those unlawful ends.”

¹ Evans v. U.S., 504 U. S. 255 (1992).

² Manrich took a guilty plea before the trial was ended.

Ocasio was convicted on all charges. He appealed, and the Fourth Circuit Court of Appeals rejected his argument that his “his conspiracy conviction was fatally flawed because the conspirators had not agreed to obtain money from a person who was not a member of the conspiracy” and affirmed his convictions.

Ocasio requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Does a conspiracy to commit extortion require that the conspirators agree to obtain property from someone outside the conspiracy?

HOLDING: No

DISCUSSION: The Court began, noting that “Under longstanding principles of conspiracy law, a defendant may be convicted of conspiring to violate the Hobbs Act based on proof that he entered into a conspiracy that had as its objective the obtaining of property from another conspirator with his consent and under color of official right.” Under the federal conspiracy statute, it is a crime to “conspire . . . to commit any offense against the United States.”³ However, “Although conspirators must “pursue the same criminal objective,” “a conspirator [need] not agree to commit or facilitate each and every part of the substantive offense.”⁴ In addition, “[i]f conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.”

The Court continued:

In order to establish the existence of a conspiracy to violate the Hobbs Act, the Government has no obligation to demonstrate that each conspirator agreed personally to commit—or was even capable of committing—the substantive offense of Hobbs Act extortion. It is sufficient to prove that the conspirators agreed that the underlying crime be committed by a member of the conspiracy who was capable of committing it. In other words, each conspirator must have specifically intended that some conspirator commit each element of the substantive offense.

In this case, Ocasio, Moreno and Mejia “share[d] a common purpose” – which was that Ocasio and “other police officers would commit every element of the substantive extortion offense.” Specifically, the officers “would obtain property “under color of official right,” something that Moreno and Mejia were incapable of doing because they were not public officials.”

The Court noted that Ocasio did not appeal that he committed the underlying, substantive Hobbs Act violations – and “under well-established rules of conspiracy law, petitioner was properly charged with and convicted of conspiring with the shopowners.”

³ 18 U. S. C. §371

⁴ Salinas v. U.S., 522 U. S. 52 (1997).

The Court agreed that “mere acquiescence” was not enough, however, but an overt act was needed, but found that it was present in this case. With respect to the “from another,” language, however, the Court further agreed that the source of the actual money was immaterial.

The Court concluded that Ocasio “may be convicted of conspiring to violate the Hobbs Act based on proof that he reached an agreement with the owner of the property in question to obtain that property under color of official right. Because petitioner joined such an agreement, his conspiracy conviction must stand.”

The judgment of the United States Court of Appeals for the Fourth Circuit was affirmed.

FULL TEXT OF OPINION: http://www.supremecourt.gov/opinions/15pdf/14-361_db8e.pdf